IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2651 OF 2006

Yashwant Ramchandra Chougule & Anr. ...Petitioners
V/s.
Chief Officer,
Ichalkaranji Nagar Parishad,
Kolhapur & Ors. ...Respondents

Shri P.S. Dani for the Petitioners.
Shri T.S. Ingale for Respondent Nos.1 and 2.

CORAM : V.M. KANADE, J.

DATED : MARCH 6, 2007

P.C. :-

1. Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for final hearing.

2. Heard the learned Counsel for the petitioners and the learned Counsel for Respondent Nos.1 and 2.

3. The petitioners take exception to the order passed by the Civil Judge, Senior Division, Ichalkaranji, whereby he has rejected two applications which are filed by the petitioners at Exhibit 89 and Exhibit 90 in Regular Civil Suit No.248/2005.

4. The petitioners are the original plaintiffs and they have filed the suit challenging the resolution passed by respondent nos.1 and 2 whereby they had permitted portion of the land for being used as crematorium for the Matang community. It is the case of the plaintiffs that this land was specifically acquired for the purpose of being used as a burial ground for the Lingayat community. It is alleged that the Lingayat community is using this land for the said purpose for more than 25 years. Initially, the suit was dismissed and appeal was preferred before the District Court against the said order. The appellate court set aside the order of the trial court and remanded the matter to the trial court, after reframing the issues, for retrial. After the case was remanded back to the trial court, two applications were preferred by the plaintiffs. In the first application, leave was sought by the petitioners to pursue the case under Order I Rule 8 of the CPC and second application was made for amendment of the plaint to make a consequential amendment to the plaint. This application was rejected

by the trial court. The trial Court held that essentially this amounted to changing the nature of the suit and that if the application was allowed, it would go beyond the scope of the remand order which was passed by the appellate court.

5. The learned Counsel for the petitioners has taken me through the plaint and the application which he preferred as also the impugned order and has submitted that the plaint if it is read as a whole clearly indicated that no personal relief was claimed by the plaintiffs and essentially the suit was filed in the representative capacity though no specific prayer was made initially when the suit was filed and that in view of the retrial order by the appellate court, this application was made by the plaintiffs.

6. The learned Counsel for the respondents, on the other hand, submitted that this is clearly an attempt to change the nature of the suit and the amendment which was sought to be made was deliberate amendment and that certain material facts were sought to be introduced. He

submitted that considering the nature of the order passed by the appellate court, the trial court was justified in coming to the conclusion that the application was beyond the scope of retrial ordered by the lower appellate court.

7. In my view, the submission made by the petitioners will have to be accepted. After going through the plaint it is clear that the plaintiff has filed the suit as a president of Lingayat Samaj and that no personal relief has been claimed by him. Since the matter has now been remanded by the lower appellate court for re-trial, no prejudice would be caused to the respondent nos.1 and 2 if the petitioner is allowed to pursue the suit in a representative capacity. I have also perused the application for amendment of the plaint. Amendment essentially is to give effect to the suit being filed in a representative capacity and the amendment if allowed, would not change the nature of the suit. It was open for the trial court to recast an issue and merely because certain issues are framed by the lower appellate court and the matter is remanded, that would not preclude the trial court from framing

additional issues. The impugned order, therefore, is set aside. Both the applications are allowed. Rule made absolute in terms of prayer clauses (a), (b) and (c).

(V.M. Kanade, J.)